

ASSEMBLY BILL

No. 2291

Introduced by Assembly Member Evans

February 22, 2006

An act to add Section 11713.25 to the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2291, as introduced, Evans. Vehicles: dealer: data security.

(1) Existing law regulates the handling of customer records and requires that a business take all reasonable steps to destroy a customer's records in its custody or control when they are no longer to be retained. Existing law requires a person or business that owns or licenses computerized data that includes personal information, as defined, to disclose any breach of the security of its system, as specified.

This bill would prohibit a computer vendor, franchisor, or other person to access, copy, create, or modify a confidential dealer computer record, as defined, or personally identifiable consumer data, as defined, from a dealer without first obtaining an express written consent from the dealer. The bill would prohibit requiring a dealer, as a condition of doing or continuing to do business, to give express consent, except under specified circumstances.

Since a violation of the Vehicle Code is a crime, by proscribing certain activities related to a confidential dealer computer record or personally identifiable consumer data, this bill would create a new crime, thereby imposing a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11713.25 is added to the Vehicle Code,
2 to read:
3 11713.25. A computer vendor, franchisor, or other person
4 shall not do any of the following:
5 (a) Access, copy, create, or modify a confidential dealer
6 computer record or personally identifiable consumer data from a
7 dealer without first obtaining express consent from the dealer.
8 (b) (1) Except as provided in paragraph (2), require a dealer,
9 as a condition of doing or continuing to do business, to give
10 express consent to perform the activities specified in subdivision
11 (a).
12 (2) Express consent may be required as a condition of doing or
13 continuing to do business if the consent is limited to permitting
14 access to personally identifiable consumer data to the extent
15 necessary to do any of the following:
16 (A) To protect against, or prevent actual or potential fraud,
17 unauthorized transactions, claims, or other liability, or to protect
18 against breaches of confidentiality or security of consumer
19 records.
20 (B) To comply with institutional risk control or to resolve
21 consumer disputes or inquiries.
22 (C) To comply with federal, state, or local laws, rules, and
23 other applicable legal requirements, including lawful
24 requirements of a law enforcement or governmental agency.
25 (D) To comply with lawful requirements of a self-regulatory
26 organization or as necessary to perform an investigation on a
27 matter related to public safety.
28 (E) To comply with a properly authorized civil, criminal, or
29 regulatory investigation, or subpoena or summons by federal,
30 state, or local authorities.

1 (F) To make other use of personally identifiable consumer
2 data with the express written consent of the consumer that has
3 not been revoked by the consumer.

4 (c) Use electronic, contractual, or other means to prevent or
5 interfere with a dealer's reasonable efforts to comply with
6 applicable data security and privacy laws and to maintain the
7 security, integrity, and confidentiality of confidential dealer
8 computer records, including, but not limited to, the dealer's
9 monitoring of specific data accessed from or written to the dealer
10 computer system. Waiver of this subdivision or purported
11 consents authorizing the activities proscribed by the subdivision
12 is void.

13 (d) The dealer shall have the authority to prospectively revoke
14 an express consent by providing a ten day written notice to the
15 person to whom the consent was provided or on any shorter
16 period of notice agreed to by that person and the dealer. An
17 agreement to waive the dealer's authority to prospectively
18 revoke an express consent is void.

19 (e) For the purposes of this section, the following terms means
20 as follows:

21 (1) "Confidential dealer computer record" means a computer
22 record residing on the dealer's computer system that contains, in
23 whole or in part, any personally identifiable consumer data,
24 financial data, or the dealer's proprietary data.

25 (2) "Computer vendor" means a person who in the ordinary
26 course of that person's business configured, sold, leased,
27 licensed, maintained, or otherwise made available to a dealer, the
28 dealer's computer system.

29 (3) "Dealer computer system" means a computer system or
30 computerized application primarily designed for use by and sold
31 to a motor vehicle dealer that, by ownership, lease, license, or
32 otherwise, is used by and in the ordinary course of business of a
33 dealer.

34 (4) "Express consent" means the unrevoked written consent
35 signed by a dealer that specifically describes the data that may be
36 accessed, the means by which it may be accessed, the purpose for
37 which it may be used, and the person or class of persons to whom
38 it may be disclosed.

39 (5) "Personally identifiable consumer data" means information
40 that is either of the following:

1 (A) Information of the type specified in subparagraph (A) of
2 paragraph (6) of subdivision (e) of Section 1798.83 of the Civil
3 Code.

4 (B) Information that is nonpublic personal information as
5 defined in Section 313.3(n)(1) of Title 16 of the Code of Federal
6 Regulations.

7 (f) This section does not limit a duty that a dealer may have to
8 safeguard the security and privacy of records maintained by the
9 dealer.

10 SEC. 2. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 the only costs that may be incurred by a local agency or school
13 district will be incurred because this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the
15 penalty for a crime or infraction, within the meaning of Section
16 17556 of the Government Code, or changes the definition of a
17 crime within the meaning of Section 6 of Article XIII B of the
18 California Constitution.